

DECISION

24454
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-210591**DATE:** March 8, 1983**MATTER OF:** Dunham Transfer and Storage**DIGEST:**

1. A contracting officer did not act improperly in supplying the Interstate Commerce Commission (ICC) with factual information to the effect that the prospective awardee was the low bidder and needed ICC operating authority to perform the contract.
2. A 13-day interval between bid opening and contract award was not an unreasonable amount of time for the contracting officer to allow the low bidder to obtain ICC operating authority.
3. A contracting officer's determination that a bidder having only a temporary operating permit was responsible was not improper where the solicitation did not specify that for purposes of award offerors had to have a permanent permit.

Dunham Transfer and Storage protests the award of a contract to Mercury Transfer and Warehouse for moving and storage services under solicitation No. N60530-83-B-0050 issued by the Department of the Navy. Dunham alleges that the contracting officer improperly assisted Mercury after bid opening to obtain an operating permit from the Interstate Commerce Commission (ICC). Dunham also contends that award to Mercury was improper since Mercury had only a temporary operating permit from the ICC at the time of award.

We deny the protest.

Section L-28 of the solicitation stated that "Offerors without necessary operating authority may submit offers, but the Offerors shall * * * be responsible for obtaining any necessary licenses and permits prior to award * * *." That section also specified that "ICC MC 165384" was one of the permits required under the contract. At bid opening on December 17, 1982, Mercury was the apparent low bidder.

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Thereafter, Mercury applied to the ICC for a temporary operating permit, for which the contracting officer, in support of the application, filed an ICC form stating that Mercury was the low bidder and that the permit was necessary for the performance of a Government contract. The ICC granted the permit on December 29 and Mercury was awarded the contract the following day.

Dunham first contends that it was improper for the contracting officer to support Mercury's application for a permit. We disagree. Military regulations generally authorize Department of Defense (DOD) participation in ICC proceedings concerning a carrier's operating authority where, among other things, that participation will result in appreciably greater economy, frequency or speed of carrier service to the DOD, or the proposed inauguration or expansion of carrier service will benefit the DOD. Military Traffic Management Regulation § 105002(3)(c) and (e) (1969 ed.). In light of these regulations, we do not believe that the contracting officer acted improperly in merely supplying the ICC with factual information that was part of a public record, where Mercury's low bid was apparently otherwise in order. We consequently find no merit to this contention.

We also reject Dunham's argument that the contracting officer improperly delayed contract award while Mercury sought an ICC operating permit. The question of whether Mercury complied with the solicitation's permit requirement was a matter of responsibility since it concerned Mercury's capability to perform the contract. Victory Van Corporation; Columbia Van Line, Incorporated, 53 Comp. Gen. 750 (1974), 74-1 CPD 178; American Mutual Protective Bureau, B-208067, July 16, 1982, 82-2 CPD 52. In this regard, the contracting officer properly allowed Mercury a reasonable period of time after bid opening to obtain the permit since contract award and not bid opening is the critical time for determining the responsibility of a firm. Ameriko Maintenance Co., B-208485, August 27, 1982, 82-2 CPD 184. We have recognized that a firm is entitled to a reasonable time to obtain any necessary authorization that is essential to contract performance. See Career Consultants, Inc., B-200506.2, May 27, 1981, 81-1 CPD 414

(holding that a 1-1/2 month interval between bid opening and contract award to permit a bidder to obtain a security clearance is not unreasonable). There is no reason to believe that a 13-day interval here was unreasonable.

Finally, Dunham complains that award to Mercury was improper since the firm had only a temporary operating permit scheduled to expire before the expiration of the contract. This allegation concerns Mercury's compliance with a definitive responsibility criterion set forth in the solicitation, that is, the permit requirement. A determination of bidder responsibility requires the exercise of the contracting officer's subjective business judgment and essentially is a matter within his discretion. 50 State Security Service, Inc., B-208342, August 17, 1982, 82-2 CPD 140. Since the solicitation here did not specify that offerors had to have permanent ICC permits for purposes of award, we are unable to conclude that the contracting officer abused his discretion in determining that Mercury's temporary permit fulfilled the solicitation's responsibility requirements.

The protest is denied.

Milton J. Fowler
for Comptroller General
of the United States